BLANK PAGE

FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 31 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

NO. 627.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, Petitioner,

v.

WILLIAM FLACCUS OAK LEATHER COMPANY.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

BRIEF FOR THE RESPONDENT.

JOHN A. McCANN,
Attorney for the Respondent.

SMITH BROS. CO., INC., LAW PRINTERS, 208-212 GRANT STREET, PITTSBURGH, PA.

BLANK PAGE

INDEX.

	PAGE
Opinions Below	1
Jurisdiction	1
Question Presented	2
Statute and Regulations Involved	2
Statement	2
Summary of Argument	2
Argument:	
A. The gain derived by respondent from compensation received by it on account of a loss of capital assets by fire constitutes capital gain, and not ordinary gain	3
B. An argument like this one, based on Section 112, was not made, mentioned, or considered, in the *Herder* case	7
C. Criticism of the argument of the petitioner	8
Conclusion	10
Appendix	11

Citations.

CASES:

Electro-Chemical Engraving Co., Inc., v. Commissioner, No. 62, Oct. Term, 1940	5
Hawaiian Gas Products, Ltd., 43 B. T. A. ——, No. 91	5
Helvering v. Hammel, No. 49, Oct. Term, 1940	5, 8
Herder v. Helvering, 106 F. (2d) 153, cert. den., 308 U. S. 617	7
McClain v. Commissioner, ——, U. S. ——	5
Pelican Bay Lumber Co. v. Blair, 31 F. (2d) 15 (C. C. A. 9) cert. den., 49 S. Ct. 512	6

Index.

STATUTES: PAGE

Revenue Act of 1921, c. 136, 42 Stat. 227:
Sec. 234 9

Revenue Act of 1924, c. 234, 43 Stat. 253:
Sec. 203 9

Revenue Act of 1934, c. 277, 48 Stat. 680:
Sec. 21 (U. S. C., Title 26, Sec. 21) 11
Sec. 22 (U. S. C., Title 26, Sec. 22) 11
Sec. 23 (U. S. C., Title 26, Sec. 23) 9, 11
Sec. 111 (U. S. C., Title 26, Sec. 111) ...2, 3, 8, 12
Sec. 112 (U. S. C., Title 26, Sec. 112) .....
.....2, 3, 4, 5, 6, 7, 8, 9, 10, 12
Sec. 113 (U. S. C., Title 26, Sec. 113) 13
Sec. 117 (U. S. C., Title 26, Sec. 101) .....
.....2, 3, 4, 5, 6, 7, 8, 9, 10, 14

Treasury Regulations 86:
Art. 112 (f)-1..... 15
Art. 113 (a) (9) (1):.....6, 9, 16
Art. 117-1 16
Art. 117-2 17
Art. 117-4 17

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

NO. 627.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, Petitioner,

v.

WILLIAM FLACCUS OAK LEATHER COMPANY.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

BRIEF FOR THE RESPONDENT.

OPINIONS BELOW.

The memorandum opinon of the Board of Tax Appeals (R. 8) is unreported. The opinion of the Circuit Court of Appeals (R. 19) is reported in 114 F. (2d) 783.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered September 13, 1940. (R. 22). The petition for a writ of certiorari was filed December 13, 1940, and was granted February 10, 1941. The jurisdiction of this Court is conferred by Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED.

Whether or not the gain arising in 1935 from compensatory insurance payments for loss by fire of capital assets, owned by the taxpayer, is to be classified as gain from a sale or exchange under Section 112(f) of the Revenue Act of 1934 and is to be used in the calculation of net capital gain or loss under Section 117(d) of that Act.

STATUTES AND REGULATIONS INVOLVED.

The relevant provisions of the statute and regulations are set forth in the Appendix, *infra*, p. 11 *et seq.*

STATEMENT.

The facts are correctly stated in the brief of the petitioner, pages 2 to 4, inclusive.

SUMMARY OF ARGUMENT.

In Section 111 of the Revenue Act of 1934, the Congress provided that the gain from a sale or exchange should be recognized to the extent provided in Section 112. Section 112(a) provided that the entire amount of such gain or loss should be recognized "except as hereinafter provided in this section". One of the series of exceptions to such ordinary treatment of the gains from sales or exchanges occurs in Section 112(f) in regard to involuntary conversions, including destruction of property in whole or in part. The rule laid down in Section 112(f) is, in part, that if the money received is expended for property like or similar in use to the destroyed propery (or is otherwise expended as stated in the subsection) no gain or loss is recognized; but if

the money received is not so expended, gain or loss is recognized but in an amount not in excess of such non-expended money. The exception in Section 112(f) is carved out of the general rule stated in Section 112(a), which relates solely to sales or exchanges. The instant transaction falls within Section 112(f). The gain from the involuntary conversion of the capital assets of this taxpayer is, therefore, classified in the Act as a gain from the sale or exchange of capital assets. Such gain is to be used in calculating net capital gain or loss as provided in Section 117(d).

ARGUMENT.

A. The Gain Derived by Respondent from Compensation Received By It on Account of a Loss of Capital Assets By Fire Constitutes Capital Gain, and Not Ordinary Gain.

The law applicable to this case is the Revenue Act of 1934. Pertinent portions thereof are printed in the appendix to this brief, pages 11 to 17.

Sections 111 and 112 of the Act deal with gain or loss on sale or exchange and with recognition of such gain or loss. Section 117 determines the amount of such gain or loss to be taken into account in computing taxable income, where the asset sold or exchanged was a capital asset.

It is not disputed that the factory and machinery of the instant taxpayer, which were destroyed by fire, were capital assets. Since, under Sections 111 and 112 of the Act, these capital assets can be said to have been sold or exchanged, Section 117 automatically comes into play. The only reason Section 117 is important in this case is that capital losses, on sale or exchange, are deductible only to the extent of $2,000 more than the gains.

This taxpayer sold other capital assets at a loss of more than $2,000 in excess of the gain derived by it from the transaction at issue in this case. This may be illustrated as follows:

Taxpayer's Treatment of Capital Gains and Losses:

Capital Losses (other sales)		$76,767.62
Less: Capital Gains:		
Instant transaction	$73,132.50	
Other sales not in issue	862.50	73,995.00
Excess of Losses over Gains		$ 2,772.62
Loss allowable (Sec. 117)		2,000.00
Loss not allowable		$ 772.62

Net result of above transactions on income:
Loss—$2,000.00

Commissioner's Treatment of the Same Items:

Capital Losses	$76,767.62
Less: Capital Gains	862.50
Excess of Losses over Gains	$75,905.12
Loss allowable	$ 2,000.00
Add: Ordinary income from the instant transaction	73,995.00
Total Income from all of above transactions	$71,995.00

Section 117 applies in a purely mathematical calculation of the gain or loss. The real issue here is the meaning of Section 112(f) of the law.

Since Section 112(f) is one of the exceptions carved out of 112(a), its subject matter must have been within the totality of 112(a), which deals only with sales or exchanges.

But the taxpayer does not have to rely upon such formal reasoning without regard to realistic considerations. The latter are also in the taxpayer's favor. From a practical standpoint, a taxpayer whose building has burned down, and who has received insurance money to compensate him for the loss, is in no different position than one who has sold his building and received the cash purchase price. Any gain in the latter transaction is clearly a capital gain from sale or exchange (under the above 1934 Act). To treat them the same is entirely uniform, logical, equitable, and in harmony with the system of internal revenue taxation. The difference is the element of personal volition.

There was no element of personal volition, meeting of the minds, or contractual agreement, in *Helvering v. Hammel*, No. 49, October Term, 1940, or in *Electro-Chemical Engraving Co., Inc. v. Commissioner*, No. 62, October Term, 1940, both decided by this Court on January 6, 1941, and both arising under the Revenue Act of 1934. In both cases, the Court held that a debtor's loss on a foreclosure (a sale *in invitum*) was to be treated as a loss on sale or exchange. In the *Hammel* case, the element of personal volition was discussed and determined to be unnecessary. Similarly, this Court held, in *McClain v. Commissioner*, ... U. S. ...., decided January 6, 1941, that a loss on retirement of bonds under Section 117(d) of the 1934 Act, includes a loss on forced surrender of such bonds for a nominal sum as well as a loss on voluntary surrender or redemption. The Board of Tax Appeals, in *Hawaiian Gas Products, Ltd.*, 43 B. T. A. .... (Advance Sheets, No. 91, Promul-

gated Feb. 18, 1941) has just followed that theory in holding that a loss sustained by a taxpayer through the condemnation and taking of his property by the Territory of Hawaii under its power of eminent domain was to be treated as a loss on sale or exchange under the Revenue Act of 1936, containing provisions identical with those of the Revenue Act of 1934 in this regard. It was found as a fact by the Board that the gas company filed an answer in the condemnation proceeding, stating that it did not wish to sell but recognized the Territory's power of eminent domain. It does not appear that the gas company reinvested the funds.

Neither did the instant taxpayer reinvest the funds. The petitioner says that the taxpayer could not sell or exchange what had ceased to exist. (Petitioner's Brief, page 5). But neither could the Hawaiian company sell or exchange what had been seized by the local government. Both cases fall within Sections 112(f) and 117(d).

In *Pelican Bay Lumber Co. v. Blair*, 31 F.(2d) 15 (C. C. A. 9), cert. den. 49 S. Ct. 512, the Ninth Circuit characterizes the receipt of insurance proceeds not reinvested as follows:

> "In other words, the transaction would in effect have amounted to a sale of property costing $98,202.83 at a profit of $67,917.49."

Petitioner has recognized the receipt of insurance proceeds as involving capital net gain under Section 117. In Regulation 86, Article 113 (a) (9),—*infra*, Appendix, p. 16,—petitioner proposes the illustration of receipt in 1934 of $200,000 of insurance upon destruction of a vessel purchased in 1926 for $100,000, and reinvestment of $150,000 of the insurance in a new vessel. Disregarding depreciation adjustments, the example says thereof:

> "* * * a taxable gain to the extent of $50,000 would be recognized. *As to the amount of such gain to be taken into account in computing net income, see Section 117.*" (Italics Supplied)

Section 112(f) provides not only for cases where there has been a partial replacement but also for cases where there has been no replacement, by like or similar property. Excerpts from the section show this to be true. The hypothetical "if" clause, reads in part: "If property (as a result of its destruction in whole or in part * * *) is * * * involuntarily converted * * * into money * * * which is forthwith in good faith * * * expended [for replacement, acquisition of control of a "replacement" corporation, or establishment of a replacement fund] no gain or loss shall be recognized". To this point, replacement of some kind is necessary. But the section continues: "If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended". In our case, in a very realistic sense, the property was converted into money. No part of the money was reinvested. Therefore, the gain is recognized as provided in Section 112(a).

B. An Argument Like This One, Based on Section 112, Was Not Made, Mentioned, or Considered in the Herder Case.

As noted by the Court below (R. 21) in our case, the conclusion reached by it is contrary to that reached in *Herder v. Helvering*, 106 F.(2d) 153 (C. of A., D. of C.), cert, den., 308 U. S. 617. The Third Circuit noted (R. 21) that it did not appear from the opinion that the ground on which the decision rests in this case was presented to that court. This is true. We have ex-

amined the records and briefs in the Herder case and they contain no argument of this kind.

Petitioner's counsel argued in the Herder case that the surrender of an insurance policy was similar to the retirement of a bond since the payment of the $50,000 of insurance money in that case was "only incidentally according to the terms of the insurance policies, and" was "in fact a payment of a liquidated claim arising upon the occurrence of the total loss by fire". Thus, they argued, the payment was on the registered policy, transformed into a liquidated demand by destruction of the insured property, and bearing interest until paid. It was further argued that such a payment fell within the provisions of Section 117(f) as a payment on a registered evidence of indebtedness issued by a corporation and bearing interest.

C. Criticism of the Argument of the Petitioner.

First. The argument (Petitioner's Brief, pages 9-10) that Section 112 deals merely with replacement of property must fall because it deals specifically with "sales or Exchanges". Section 112(a) reads:

> "General Rule.—On the sale or exchange of property the entire amount of the gain or loss, determined under Section 111, shall be recognized, except as hereinafter provided in this section".

Property may be converted (1) into other property, (2) into other property and money, or into (3) money. Each is a conversion. The fact that the conversion is involuntary and of property into money is immaterial. That is true of sales aside from the element of voluntary action of the prior owner. The situation presented in the *Hammel* case, *supra,* was an involuntary conversion. There was no replacement. The money was re-

ceived on the mortgage. The mortgage was later foreclosed without the will of the mortgagor.

Second. Petitioner's argument (pages 15 to 20) based on the history of the section is also without substance. He argues that since the original predecessor section (R. A. 1921, Section 234(a)(14)) was a deduction section, applicable only in case of gain and on a partial exchange, the new substituted section (R. A. 1924, Section 203(b)(5)) should be limited to replacement, or to partial replacement, situations. This argument fails to give effect to the entirely new scheme of the Revenue Act of 1924, and subsequent Acts, which for the first time had a separate section on recognition of gain or loss. If Congress had desired to retain the old deduction provision it would have done so under Section 23 or a similar section. The language in regard to involuntary conversions was changed and they were filled into the scheme not only of "exchanges" but of "sales or exchanges". If the property was replaced in whole or in part, the transaction was treated as an exchange. In that event, counsel for the government would admit that the gain, if any, was taxable as capital gain under 112(f) and 117(d). But if the money obtained was not used for replacement, then the gain was still recognized, this time as on a sale rather than an exchange, and the same capital system of computation was applied.

Third. Any consistency in policy of the Treasury Department in prior regulations (Petitioner's Brief, pages 20-21) loses force in view of Article 113(a)(9)(1) of Regulations 86 under the 1934 Act (Appendix to this brief, p. 16). It also loses force in view of the specific wording of the statute which requires no classification by regulations.

Moreover, there has been no rounded consistency in the treatment of gains and losses. For example, a gain on the sale of a personal residence is taxable as capital gain, but a loss thereon is not deductible as a capital loss or otherwise.

CONCLUSION.

1. The gain from the involuntary conversion of taxpayer's capital assets into cash is to be recognized as provided in Section 112 (f) of the Revenue Act of 1934 and is to be included in income as provided in Section 117(d) of the Revenue Act of 1934.

2. The decision of the Court below is correct and it should be affirmed.

Respectfully submitted,

JOHN A. MCCANN,
Attorney for the Respondent.

March, 1941.

APPENDIX.

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 21. NET INCOME.

"Net income" means the gross income computed under section 22, less the deductions allowed by section 23. [U. S. C., Title 26, Sec. 21.]

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes * * * gains or profits and income derived from any source whatever. * * *

* * * * *

(e) *Determination of Gain or Loss.*—In the case of a sale or other disposition of property, the gain or loss shall be computed as provided in section 111. [U. S. C., Title 26, Sec. 22.]

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * *

(e) LOSSES BY INDIVIDUALS.—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

* * * * *

(3) of property not connected with the trade or business, if the loss arises from fires, storms, shipwreck, or other casualty, or from theft. No loss shall be allowed as a deduction under this paragraph if at the time of the filing of the return such loss has been claimed as a deduction for estate tax purposes in the estate tax return.

(f) LOSSES BY CORPORATIONS.—In the case of a corporation, losses sustained during the taxable year and not compensated for by insurance or otherwise.

(j) CAPITAL LOSSES.—Losses from sales or exchanges of capital assets shall be allowed only to the extent provided in section 117 (d).

* * * * *

[U. S. C., Title 26, Sec. 23.]

SEC. 111. DETERMINATION OF AMOUNT OF, AND RECOGNITION OF, GAIN OR LOSS.

(a) *Computation of Gain or Loss.*—The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in section 113 (b) for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.

* * * * *

(c) *Recognition of Gain or Loss.*—In the case of a sale or exchange, the extent to which the gain or loss determined under this section shall be recognized for the purposes of this title, shall be determined under the provisions of section 112.

* * * * *

[U. S. C., Title 26, Sec. 111.]

SEC. 112. RECOGNITION OF GAIN OR LOSS.

(a) *General Rule.*—Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 111, shall be recognized, except as hereinafter provided in this section.

* * * * *

(f) *Involuntary Conversion.*—If property (as a result of its destruction in whole or in part, theft

or seizure, or an exercise of the power of requisition or condemnation, or the threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the Commissioner with the approval of the Secretary, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

* * * * *

[U. S. C., Title 26, Sec. 112.]

SEC. 113. ADJUSTED BASIS FOR DETERMINING GAIN OR LOSS.

(a). BASIS (UNADJUSTED) OF PROPERTY.—The basis of property shall be the cost of such property; except that—

* * * * *

(9) INVOLUNTARY CONVERSIONS. If the property was acquired, after February 28, 1913, as the result of a compulsory or involuntary conversion described in section 112 (f), the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer

recognized upon such conversion under the law applicable to the year in which such conversion was made.

* * * * *

[U. S. C., Title 26, Sec. 113.]

SEC. 117. CAPITAL GAINS AND LOSSES.

(a) *General Rule.*—In the case of a taxpayer, other than a corporation, only the following percentages of the gain or loss recognized upon the sale or exchange of a capital asset shall be taken into account in computing net income: * * *

(b) *Definition of Capital Assets.*—For the purposes of this title, "capital assets" means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(c) DETERMINATION OF PERIOD FOR WHICH HELD.— * * *

(d) LIMITATION ON CAPITAL LOSSES.—Losses from sales or exchanges of capital assets shall be allowed only to the extent of $2,000 plus the gains from such sales or exchanges. If a bank or trust company incorporated under the laws of the United States or of any State or Territory, a substantial part of whose business is the receipt of deposits, sells any bond, debenture, note, or certificate or other evidence of indebtedness issued by any corporation (including one issued by a government or political subdivision thereof), with interest

coupons or in registered form, any loss resulting from such sale (except such portion of the loss as does not exceed the amount, if any, by which the adjusted basis of such instrument exceeds the par or face value thereof) shall not be subject to the foregoing limitation and shall not be included in determining the applicability of such limitation to other losses.

(e) GAINS AND LOSSES FROM SHORT SALES, ETC.— * * *

(f) RETIREMENT OF BONDS, ETC.—For the purposes of this title, amounts received by the holder upon the retirement of bonds, debentures, notes, or certificates or other evidences of indebtedness issued by any corporation (including those issued by a government or political subdivision thereof), with interest coupons or in registered form, shall be considered as amounts received in exchange therefor. [U. S. C., Title 26, Sec. 101.]

Treasury Regulations 86, promulgated under the Revenue Act of 1934:

ART. 112 (f)–1. *Reinvestment of proceeds of involuntary conversion.*—In order to avail himself of the benefits of section 112 (f) it is not sufficient for the taxpayer to show that subsequent to the receipt of money from a condemnation award he purchased other property similar or related in use. The taxpayer must trace the proceeds of the award into the payments for the property so purchased. It is not necessary that the proceeds be earmarked, but the taxpayer must be able to prove that the same were actually reinvested in such other property similar or related in use to the property converted. The benefits of section 112 (f) cannot be extended to a taxpayer who does not purchase other

property similar or related in service or use, notwithstanding the fact that there was no other such property available for purchase.

* * * * * *

It is incumbent upon a taxpayer "forthwith" to apply for and receive permission to establish a replacement fund in every case where it is not possible to replace immediately. If an expenditure in actual replacement would be too late, a request for the establishment of a replacement fund would likewise be too late.

* * * * *

ART. 113 (a) (9)–1. *Property acquired as a result of an involuntary conversion.*—The provisions of section 113 (a) (9) may be illustrated by the following example:

Example: A vessel purchased by A in 1926 for $100,000 is destroyed in 1934 and A receives insurance in the amount of $200,000. Disregarding, for the purpose of this example, the adjustment for depreciation, if A invests $150,000 in a new vessel, taxable gain to the extent of $50,000 would be recognized. As to the amount of such gain to be taken into account in computing net income, see section 117. The basis of the new vessel is $100,000; that is, the cost of the old vessel ($100,000) minus the money received by the taxpayer which was not expended in the acquisition of the new vessel ($50,000) plus the amount of gain recognized upon the conversion ($50,000).

ART. 117–1. *Meaning of capital assets.*—The term "capital assets" includes all classes of property not specifically excluded by section 117 (b). The term is not limited to stocks and bonds nor to property held for more than two years. In determining whether property is a "capital asset," the period for which held is immaterial.

ART. 117–2. *Limitations on capital gains and capital losses.*—* * *

Section 117 (d) provides a limitation an deductions for capital losses affecting all taxpayers including corporations, that is, losses from sales or exchanges of capital assets shall be allowed as deductions only to the extent of $2,000 plus the gains from such sales and exchanges. However, in the case of certain banks or trust companies, this limitation is subject to the modification provided in that section.

* * * * * *

ART. 117–4. *Application of section 117 generally.*—Section 117 applies only to gains and losses upon the sale or exchange of capital assets and, therefore, has no application to loss of useful value upon the permanent abandonment of the use of property (see article 23 (e)–3), or loss sustained as the result of corporate stock or debts becoming worthless.

BLANK PAGE

SUPREME COURT OF THE UNITED STATES.

No. 627.—October Term, 1940.

Guy T. Helvering, Petitioner, *vs.* William Flaccus Oak Leather Co., Respondent.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[April 28, 1941.]

Mr. Justice Murphy delivered the opinion of the Court.

In September, 1935, respondent's plant was destroyed by fire. Later that year it received $73,132.50 from an insurance company as compensation for the loss of buildings, machinery, and equipment. The buildings, machinery, and equipment had been fully depreciated for income tax purposes prior to 1935, and no part of the insurance proceeds was used to acquire other property similar or related in service or use to the property destroyed, or to acquire control of a corporation owning such property, or to establish a fund to replace the property destroyed.

In its return for 1935, respondent reported the insurance proceeds as capital gain and added to that amount a gain, not in issue here, of $862.50 from sales of securities. During that same year, respondent had capital losses, also not in dispute, of $76,767.62 which it used to offset completely the total reported capital gains of $73,995. This left an excess of capital losses over capital gains of $2,772.62, and respondent deducted $2,000 of that amount from ordinary income.

The Commissioner held that the insurance proceeds were ordinary income rather than capital gain. Accordingly, he decreased respondent's capital gain and increased its ordinary income by $73,132.50, and allowed respondent capital losses of only $2,862.50, an amount equal to the gain from security sales plus $2,000. The Board of Tax Appeals affirmed in a memorandum opinion on the authority of *Estate of Herder*, 36 B. T. A. 934. The Circuit Court of Appeals reversed. 114 F. (2d) 783. We granted certiorari on February 10, 1941, because the decision below was in conflict with *Herder* v. *Helvering*, 106 F. (2d) 153.

It is conceded that respondent's losses resulted from sales or exchanges of capital assets. It is also conceded that the entire amount received from the insurance company must be included in respondent's income since the property had been fully depreciated for income tax purposes prior to 1935. Respondent contends, however, that that amount may be reported as capital gain, in order that capital losses may absorb it, rather than as an item of ordinary gross income.

Section 117(d) of the Revenue Act of 1934 (48 Stat. 680) provides in part: "Losses from sales or exchanges of capital assets shall be allowed only to the extent of $2,000 plus the gains from such sales or exchanges." Thus, the single question is whether the amount respondent received from the insurance company derived from the "sale or exchange" of a capital asset.

Generally speaking, the language in the Revenue Act, just as in any statute, is to be given its ordinary meaning, and the words "sale" and "exchange" are not to be read any differently. Compare *Helvering* v. *Hammel,* 311 U. S. 504; *Fairbanks* v. *United States,* 306 U. S. 436; *Burnet* v. *Harmel,* 287 U. S. 103. Neither term is appropriate to characterize the demolition of property and subsequent compensation for its loss by an insurance company. Plainly that pair of events was not a sale. Nor can they be regarded as an exchange, for "exchange", as used in § 117(d), implies reciprocal transfers of capital assets, not a single transfer to compensate for the destruction of the transferee's asset.

The fact that § 112(f) characterizes destruction of property and indemnification for its loss as an involuntary conversion does not establish that the two events constituted a sale or exchange. That section provides: "If property (as a result of its destruction in whole or in part, theft, seizure, or an exercise of the power of requisition or condemnation, or the threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the Commissioner with the approval of the Secretary, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recog-

nized. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended."

We can find nothing in this language or in other sections of the Act which indicates, either expressly or by implication, that Congress intended to classify as "sales or exchanges" the involuntary conversions enumerated in § 112(f). It is true that § 111(c) says that "in the case of a sale or exchange, the extent to which the gain or loss . . . shall be recognized . . . shall be determined under the provisions of section 112". It is also true that § 112(f) follows § 112(a) which provides that "upon the sale or exchange of property the entire amount of the gain or loss . . . shall be recognized except as hereinafter provided in this section".

The inference, drawn from the juxtaposition and cross referencing of these three sections, that the involuntary conversion of respondent's property is thus implicitly characterized as a sale or exchange ignores the fact that in the same Act Congress has chosen a particular method for classifying as sales or exchanges transactions which would not ordinarily be described by one of those terms. Thus § 115(c) provides: "Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock, and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for the stock."

Section 117(e) provides: "For the purposes of this title gains or losses from short sales of property shall be considered as gains or losses from sales or exchanges of capital assets; and gains or losses attributable to the failure to exercise privileges or options to buy or sell property shall be considered as gains or losses from sales or exchanges of capital assets held for one year or less." See H. Rep. No. 704, 73d Cong., 2d Sess., p. 31; H. Rep. No. 1385, 73d Cong., 2d Sess., p. 23. Section 117(f) provides: "For the purposes of this title, amounts received by the holder upon the retirement of bonds, debentures, notes or certificates or other evidences of indebtedness issued by any corporation . . . with interest coupons or in registered form, shall be considered as amounts received in exchange therefor." See *McClain* v. *Commissioner*, 311 U. S. 527; *Fairbanks* v. *United States, supra;* H. Rep. No. 704, 73d Cong., 2d Sess., p. 31.

These sections demonstrate that Congress has expressly specified the ambiguous transactions which are to be regarded as sales or exchanges for income tax purposes. They are convincing evidence that the involuntary conversion of respondent's property, which bears far less resemblance to a sale or exchange than the transactions embraced in §§ 115(c), 117(e), and 117(f) is not to be placed in one or the other of those categories by implication. The prompt withdrawal of Article 113(a)(9)(1) of Treasury Regulations No. 86 (see T. D. 4098, XV-2 Cum. Bull. 159) indicates that the administrators charged with the enforcement of § 112(f) reached a similar conclusion. Compare *Burnet* v. *Chicago Portrait Co.*, 285 U. S. 1, 16.

The judgment of the Circuit Court of Appeals is reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.